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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 287**

(SENATOR MINARD, *original sponsor*)

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[Passed March 10, 2012; in effect from passage.]  
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AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing

1 certain of the agencies to promulgate certain legislative  
2 rules with various modifications presented to and recommended  
3 by the Legislative Rule-Making Review Committee and as amended  
4 by the Legislature; authorizing the State Tax Department to  
5 promulgate a legislative rule relating to the payment of taxes  
6 by electronic funds transfer; authorizing the State Tax  
7 Department to promulgate a legislative rule relating to the  
8 commercial patent incentives tax credit; authorizing the State  
9 Tax Department to promulgate a legislative rule relating to an  
10 exchange of information agreement between the State Tax  
11 Department and the Department of Commerce, the Department of  
12 Transportation and the Department of Environmental Protection;  
13 authorizing the Insurance Commissioner to promulgate a  
14 legislative rule relating to the licensing and conduct of  
15 insurance producers and agencies; authorizing the Insurance  
16 Commissioner to promulgate a legislative rule relating to  
17 surplus lines insurance; authorizing the Insurance  
18 Commissioner to promulgate a legislative rule relating to  
19 insurance holding company systems; authorizing the Insurance  
20 Commissioner to promulgate a legislative rule relating to  
21 continuing education for individual insurance producers;  
22 authorizing the Insurance Commissioner to promulgate a  
23 legislative rule relating to mini COBRA; authorizing the  
24 Insurance Commissioner to promulgate a legislative rule  
25 relating to workers' compensation insurance for state

1 agencies; authorizing the Division of Banking to promulgate a  
2 legislative rule relating to residential mortgage lenders,  
3 brokers and loan originators; authorizing the Alcohol Beverage  
4 Control Commission to promulgate a legislative rule relating  
5 to licensed retailer operations; authorizing the Alcohol  
6 Beverage Control Commission to promulgate a legislative rule  
7 relating to the licensing of retail outlets; authorizing the  
8 Racing Commission to promulgate a legislative rule relating to  
9 simulcast pari-mutuel wagering at an authorized gaming  
10 facility in a historic hotel; authorizing the Athletic  
11 Commission to promulgate a legislative rule relating to mixed  
12 martial arts; and authorizing the Board of Directors of the  
13 West Virginia Health Insurance Plan to promulgate a  
14 legislative rule relating to a premium subsidy.

15 *Be it enacted by the Legislature of West Virginia:*

16 That article 7, chapter 64 of the Code of West Virginia, 1931,  
17 as amended, be amended and reenacted to read as follows:

18 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE**  
19 **LEGISLATIVE RULES.**

20 **§64-7-1. State Tax Department.**

21 (a) The legislative rule filed in the State Register on April  
22 21, 2011, authorized under the authority of section five-z, article  
23 ten, chapter eleven of this code, modified by the State Tax  
24 Department to meet the objections of the Legislative Rule-Making  
25 Review Committee and refiled in the State Register on August 5,

1 2011, relating to the State Tax Department (payment of taxes by  
2 electronic funds transfer, 110 CSR 10F), is authorized with the  
3 following amendments:

4 On page four, subsection 3.2., by striking out all of  
5 subsection 3.2. and inserting in lieu thereof a new subsection  
6 3.2., to read as follows:

7 3.2. The threshold amount is \$100,000.00 in tax liability per  
8 tax type per taxable year or reporting period beginning on or after  
9 January 1, 2004, subject to subdivisions 3.2.1., 3.2.2., 3.2.3. and  
10 3.2.4. of this subsection.;

11 And,

12 On page four, after subsection 3.2., by inserting four new  
13 subdivisions, designated subdivisions 3.2.1., 3.2.2., 3.2.3. and  
14 3.2.4., to read as follows:

15 "3.2.1. For tax years beginning on or after January 1, 2013,  
16 the threshold amount for determining whether a taxpayer shall pay  
17 electronically is \$50,000 in tax liability paid for a single tax  
18 type in the immediately preceding tax year: *Provided*, That for tax  
19 years beginning on or after January 1, 2013, any taxpayer that pays  
20 more than \$50,000 for any tax type in the immediately preceding tax  
21 year shall electronically pay the taxes for all tax returns filed;

22 3.2.2. For tax years beginning on or after January 1, 2014,  
23 the threshold amount for determining whether a taxpayer shall pay  
24 electronically is \$25,000 in tax liability paid for a single tax  
25 type in the immediately preceding tax year: *Provided*, That for tax

1 years beginning on or after January 1, 2014, any taxpayer that pays  
2 more than \$25,000 for any tax type in the immediately preceding tax  
3 year shall electronically pay the taxes for all tax returns filed;

4 3.2.3. For tax years beginning on or after January 1, 2015,  
5 the threshold amount for determining whether a taxpayer shall pay  
6 electronically is \$10,000 in tax liability paid for a single tax  
7 type in the immediately preceding tax year: *Provided*, That for tax  
8 years beginning on or after January 1, 2015, any taxpayer that pays  
9 more than \$10,000 for any tax type in the immediately preceding tax  
10 year shall electronically pay the taxes for all tax returns filed;

11 3.2.4. Tax Commissioner may determine the tax types for which  
12 electronic payment of taxes is not required."

13 (b) The legislative rule filed in the State Register on July  
14 18, 2011, authorized under the authority of section ten, article  
15 thirteen-aa, chapter eleven of this code, modified by the State Tax  
16 Department to meet the objections of the Legislative Rule-Making  
17 Review Committee and refiled in the State Register on November 22,  
18 2011, relating to the State Tax Department (commercial patent  
19 incentives tax credit, 110 CSR 13Q), is authorized, with the  
20 following amendment:

21 On page three, subsection 2.18, line twenty-one, following the  
22 words "June 19" and the comma, by striking out the number "2970"  
23 and inserting in lieu thereof the number "1970";

24 On page five, subsection 3.1.7, line six, following the words  
25 "allowed under", by striking out the words "Subsection 3.1 or 3.2

1 of”;

2 And,

3 On page five, subsection 3.1.8, line ten, following the words  
4 “allowed under”, by striking out the words “Subsection 3.1 or 3.2  
5 of”.

6 (c) The legislative rule filed in the State Register on July  
7 29, 2011, authorized under the authority of section five-s, article  
8 ten, chapter eleven of this code, modified by the State Tax  
9 Department to meet the objections of the Legislative Rule-Making  
10 Review Committee and refiled in the State Register on November 22,  
11 2011, relating to the State Tax Department (exchange of information  
12 agreement between the State Tax Department and the Department of  
13 Commerce, the Department of Transportation and the Department of  
14 Environmental Protection, 110 CSR 50G), is authorized.

15 **§64-7-2. Insurance Commissioner.**

16 (a) The legislative rule filed in the State Register on July  
17 28, 2011, authorized under the authority of section ten, article  
18 two, chapter thirty-three of this code, relating to the Insurance  
19 Commissioner (licensing and conduct of insurance producers and  
20 agencies, 114 CSR 2), is authorized.

21 (b) The legislative rule filed in the State Register on July  
22 28, 2011, authorized under the authority of section ten, article  
23 two, chapter thirty-three of this code, relating to the Insurance  
24 Commissioner (surplus lines insurance, 114 CSR 20), is authorized.

25 (c) The legislative rule filed in the State Register on July

1 28, 2011, authorized under the authority of section ten, article  
2 two, chapter thirty-three of this code, modified by the Insurance  
3 Commissioner to meet the objections of the Legislative Rule-Making  
4 Review Committee and refiled in the State Register on October 21,  
5 2011, relating to the Insurance Commissioner (insurance holding  
6 company systems, 114 CSR 35), is authorized.

7 (d) The legislative rule filed in the State Register on July  
8 28, 2011, authorized under the authority of section ten, article  
9 two, chapter thirty-three of this code, modified by the Insurance  
10 Commissioner to meet the objections of the Legislative Rule-Making  
11 Review Committee and refiled in the State Register on October 21,  
12 2011, relating to the Insurance Commissioner (continuing education  
13 for individual insurance producers, 114 CSR 42), is authorized with  
14 the following amendment:

15 On page three, subsection 4.2., by striking out all of  
16 subsection 4.2. and inserting in lieu thereof a new subsection 4.2.  
17 to read as follows:

18 "4.2. The commissioner shall, in consultation with the board,  
19 develop a program regarding continuing education requirements  
20 during the transition to the new biennium period established  
21 pursuant to the 2012 amendments to this rule; such program shall be  
22 posted on the agency website."

23 (e) The legislative rule filed in the State Register on July  
24 28, 2011, authorized under the authority of section ten, article  
25 two, chapter thirty-three of this code, relating to the Insurance

1 Commissioner (mini COBRA, 114 CSR 93), is authorized with the  
2 following amendments:

3 On page three, subsection 3.5., after the word "subsection" by  
4 striking out "3.5." and inserting in lieu thereof "3.4.";

5 On page three, subsection 3.6, by striking out the subsection  
6 in its entirety and inserting in lieu thereof, the following:

7 "3.6. *Election of coverage by beneficiary.* A covered  
8 employee or other qualified beneficiary who wants to elect  
9 continuation coverage must do so in writing to the carrier within  
10 30 days after receiving a notice under subsection 3.5 of this  
11 section and must include payment of the initial premium set forth  
12 in such notice. The premium payment due shall be for the period  
13 beginning on the date coverage would have otherwise terminated  
14 due to the qualifying event. The premium charged for continuation  
15 of coverage may not exceed 100% percent of the applicable  
16 premium.";

17 On page four, subdivision 3.6.a., by striking out the  
18 subdivision in its entirety and inserting in lieu thereof, the  
19 following:

20 "3.6.a. The carrier or its designee shall process all  
21 elections promptly and provide coverage retroactively to the date  
22 coverage would otherwise have terminated on the basis of the  
23 qualifying event. Employers are required to promptly provide to  
24 the carrier or its designee any information and paperwork  
25 necessary to facilitate the processing of a request for

1 continuation of coverage. After an election and initial premium  
2 remittance, the carrier must bill the beneficiary for premiums no  
3 more often than monthly and with an allowance for a 30-day grace  
4 period for payment.”;

5 And,

6 On page four, subsection 3.7., by striking out all of  
7 subsection 3.7. and inserting in lieu thereof a new subsection  
8 3.7., to read as follows:

9 “3.7. *Remedies in the event of carrier noncompliance.* If a  
10 carrier fails to comply with the requirements of this rule,  
11 including the notice requirements of subsection 3.5. of this  
12 section, and such noncompliance results in the failure of an  
13 eligible adult qualified beneficiary of a covered employee to  
14 timely elect continuation coverage, every qualified beneficiary  
15 of the covered employee covered on the day of the qualifying  
16 event shall remain covered under the health benefit plan until  
17 the qualified beneficiaries are afforded the opportunity to elect  
18 such coverage.”

19 (f) The legislative rule filed in the State Register on July  
20 28, 2011, authorized under the authority of section ten, article  
21 two, chapter thirty-three of this code, relating to the Insurance  
22 Commissioner (Workers’ Compensation Insurance for state agencies,  
23 114 CSR 94), is authorized with the following amendments:

24 On page one, subsection 2.2., by striking out all of  
25 subsection 2.2. and inserting in lieu thereof a new subsection

1 2.2., to read as follows:

2 "2.2. 'Discretionary participant' means any discretionary  
3 participant as defined in W. Va. Code §33-2-21a(a)(1).";

4 On page two, subsection 2.8., by striking out the words "and  
5 those discretionary participants that have agreed to participate  
6 in SAWC under an agreement with the Commissioner" and inserting  
7 in lieu thereof the words "and for those discretionary  
8 participants that participate in SAWC";

9 On page two, subsection 3.1., by striking out the words "and  
10 shall send to each a notice of such determination";

11 On page two, subdivision 3.1.a., by striking out the words  
12 "Such notice shall inform: (i) Executive state entities that they  
13 will be required to execute the Agreement and" and inserting in  
14 lieu thereof the words "The Commissioner shall inform: (i)  
15 Executive state entities that they will be required";

16 On page two, subdivision 3.1.b., by striking out the words  
17 "Any recipient of a notice sent pursuant to subdivision a of this  
18 subsection that believes it should have been classified  
19 differently, or any entity that did not receive a notice" and  
20 inserting in lieu thereof the words "Any entity that believes it  
21 should have been classified differently, or any entity that did  
22 not receive a notice of eligibility";

23 On page two, subsection 3.2., by striking out all of  
24 subsection 3.2. and inserting in lieu thereof a new subsection  
25 3.2., to read as follows:

1           "3.2. The Commissioner may make participation in SAWC by a  
2 discretionary participant contingent on the execution of the  
3 Agreement.";

4           On page three, subdivision 3.3.a., after the word  
5 "Agreement" by inserting the words "or other noncompliance with  
6 program requirements";

7           On page three, subdivision 3.3.c., by striking out the words  
8 "the latter of one year from removal or the next open enrollment  
9 period" and inserting in lieu thereof the words "a period of not  
10 more than one year to be determined by the commissioner based on  
11 the seriousness of the non-compliance and the efforts of the  
12 participant to come into compliance";

13           On page three, subdivision 3.3.d., by striking out the words  
14 "upon application and re-execution of the Agreement" and  
15 inserting in lieu thereof the words "upon written request and  
16 expiration of the exclusion period determined in accordance with  
17 subdivision 3.3.c. of this subsection";

18           On page three, subdivision 3.4.a., by striking out the words  
19 "any fee" and inserting in lieu thereof the words "any  
20 assessment";

21           On page three, subdivision 3.4.a., by striking out the words  
22 "assessed fee" and inserting in lieu thereof the word  
23 "assessment";

24           On page three, subdivision 3.4.a., by striking out the words  
25 "such fee" and inserting in lieu thereof the words "such

1 assessment”;

2 And,

3 On page three, subdivision 3.4.b., by striking out the word  
4 “fees” and inserting in lieu thereof the word “assessment”.

5 **§64-7-3. Division of Banking.**

6 The legislative rule filed in the State Register on July 21,  
7 2011, authorized under the authority of section three, article  
8 seventeen, chapter thirty-one of this code, relating to the  
9 Division of Banking (residential mortgage lenders, brokers and  
10 loan originators, 106 CSR 5), is authorized.

11 **§64-7-4. Alcohol Beverage Control Commission.**

12 (a) The legislative rule filed in the State Register on July  
13 13, 2011, authorized under the authority of section six, article  
14 three-a, chapter sixty of this code, modified by the Alcohol  
15 Beverage Control Commission to meet the objections of the  
16 Legislative Rule-Making Review Committee and refiled in the State  
17 Register on November 21, 2011, relating to the Alcohol Beverage  
18 Commission (licensed retailer operations, 175 CSR 1), is  
19 authorized.

20 (b) The legislative rule filed in the State Register on July  
21 13, 2011, authorized under the authority of section six, article  
22 three-a, chapter sixty of this code, relating to the Alcohol  
23 Beverage Control Commission (licensing of retail outlets, 175 CSR  
24 5), is authorized.

25 **§64-7-5. Racing Commission.**

1           The legislative rule filed in the State Register on  
2 September 13, 2011, authorized under the authority of section  
3 twelve-d, article twenty-three, chapter nineteen of this code,  
4 relating to the Racing Commission (simulcast pari-mutual wagering  
5 at an authorized gaming facility in a historic hotel, 178 CSR 7),  
6 is authorized.

7 **§64-7-6. Athletic Commission.**

8           The legislative rule filed in the State Register on July 28,  
9 2011, authorized under the authority of section three-a, article  
10 five-a, chapter twenty-nine of this code, modified by the  
11 Athletic Commission to meet the objections of the Legislative  
12 Rule-Making Review Committee and refiled in the State Register on  
13 January 6, 2012, relating to the Athletic Commission (mixed  
14 martial arts, 177 CSR 2), is authorized, with the following  
15 amendments:

16           On pages three and four, §177-2.5., by striking out all of  
17 §177-2.5. and inserting in lieu thereof a new §177-2.5., to read  
18 as follows:

19           "§177-2.5. Venues must have a minimum seating capacity of  
20 2,500 and video replay capabilities in good working order. However,  
21 the Commission may waive the minimum seating capacity requirement.  
22 Venues with a seating capacity of 3,500 or more must have a minimum  
23 of four video monitors displaying a continuous live feed of the  
24 match for the spectators; venues with a maximum seating capacity of  
25 3,499 or less must have at least two monitors displaying a

1 continuous live feed of the match for the spectators. All such  
2 video monitors must be a minimum of six feet by six feet. No event  
3 shall take place until the venue has been approved by the  
4 commission.”;

5 On page twelve, subsection 29.5., by striking out all of  
6 subsection 29.5. and inserting in lieu thereof a new subsection  
7 29.5., to read as follows:

8 “29.5. Prohibition of certain dressings. - No second shall be  
9 permitted to use grease or any other substances on the body of a  
10 contestant. The use of petroleum jelly in corners is not allowed  
11 except in the use of stopping blood and on cuts. Petroleum jelly,  
12 or other substances approved by the commission, may be used in  
13 between rounds in the use of stopping blood and on cuts and only in  
14 the presence of a representative of the commission. The use of  
15 drugs, alcohols or stimulants during a match by any contestant is  
16 adequate cause for revoking license.”;

17 On page twenty, subsection 41.1., by striking out all of  
18 subsection 41.1. and inserting in lieu thereof a new subsection  
19 41.1., to read as follows:

20 “41.1. Matches may take place in a cage or ring that has been  
21 approved by the commission. The cage or ring shall meet the  
22 requirements set forth by the commission and is subject to  
23 inspection prior to each match by a commission representative such  
24 as a referee.”;

25 On page twenty-one, subsection 41.3., by striking out all of

1 subsection 41.3. and inserting in lieu thereof a new subsection  
2 41.3., to read as follows:

3 "41.3. The commission shall determine all seating arrangements  
4 at cage side necessary to effectuate the match. A promoter may  
5 submit a proposed seating arrangement to the commission one week  
6 before the event.";

7 And,

8 On page twenty-one, after subsection 41.3., by inserting a new  
9 subsection, designated subsection 41.4., to read as follows:

10 41.4. Ring - The ring specifications shall meet the following  
11 requirements:

12 41.4.a. The ring shall be no smaller than twenty feet square  
13 and larger than thirty-two feet square within the ropes. One  
14 corner shall have a red designation and the corner directly  
15 opposite shall have a blue designation.

16 41.4.b. The floor must extend at least eighteen inches beyond  
17 the ropes. The ring floor must be padded in a manner as approved  
18 by the commission, with at least one inch layer of foam padding.  
19 No vinyl or other plastic rubberized cover shall be permitted. The  
20 fighting area canvas shall not be more than four feet above the  
21 floor of the building and shall have suitable steps or ramp for use  
22 by the participants.

23 41.4.c. Ring posts must be made of metal, not more than three  
24 inches in diameter, extending from the floor of the building to a  
25 minimum height of fifty-eight inches above the ring floor, and must

1 be properly padded in a manner approved by the commission. Ring  
2 posts must be at least eighteen inches away from the ring ropes.

3 41.4.d. There must be five ring ropes, not less than one inch  
4 in diameter and wrapped in soft material. The lowest ring rope  
5 must be twelve inches above the ring floor.

6 41.4.e. There must not be any obstruction or object,  
7 including, without limitation, a triangular border, on any part of  
8 the ring floor.”.

9 **§64-7-7. Directors of the West Virginia Health Insurance Plan.**

10 The legislative rule filed in the State Register on the  
11 twenty-eighth day of July, two thousand eleven, authorized under  
12 the authority of section seven-b, article forty-eight, chapter  
13 thirty-three, of this code, relating to the Board of Directors of  
14 the West Virginia Health Insurance Plan (premium subsidy, 113 CSR  
15 1), is authorized.